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the discharge of fill material into waters of the U.S., except that the procedures of part 336 of this chapter will be used in those cases where the discharge of fill material is also the discharge of dredged material, i.e., beach nourishment, within banks disposal for erosion control, etc.

(b) After construction of Corps Civil Works water resource projects, certain operations and maintenance activities involving the discharge of fill material require evaluation under the CWA. These activities generally include lake-shore management, installation of boat ramps, erosion protection along the banks of navigation channels, jetty maintenance, remedial erosion control, etc. While these activities are normally addressed in the existing environmental impact statement for the project, new technology or unexpected events such as storms or high waters may require maintenance or remedial work not fully addressed in existing environmental documents or state permits. In determining compliance with the applicable environmental laws and regulations the district engineer should use the CWA exemptions at 404(f) and NEPA categorical exclusions to the maximum extent practicable. If the district engineer decides that the changes have not been adequately addressed in existing environmental documentation, the procedures of this part should be followed.

[53 FR 14920, Apr. 26, 1988]

§ 338.2 Activities involving the discharge of dredged or fill material into waters of the U.S.

(a) Generally, fill activities conducted by the Corps for operations and maintenance of existing Civil Works water resource and navigation projects are routine and have little, if any, potential for significant degradation of the environment. District engineers are encouraged to develop general authorizations in accordance with section 404 of the CWA and 104 of the ODA following the procedures of § 337.5 of this chapter for categories of such routine activities. The general authorization should satisfy all compliance requirements including water quality certifications and, if applicable, coastal zone consistency determinations. For ac-

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tivities which are not conducive to the development of general authorizations or are more appropriately evaluated on an individual basis, the following procedures should be followed.

(b) A public notice should be issued using the procedures § 337.1 of this chapter.

(c) Water quality certifications should be requested and, if applicable, coastal zone consistency determinations should be provided using the procedures of § 336.1(b) (8) and (9) of this chapter.

(d) The discharge site should be specified through the application of the section 404(b)(1) guidelines.

(e) The procedures of 40 CFR part 230 should be used to determine the NEPA compliance requirements.

(f) The factors of § 336.1(c) of this chapter should be followed when evaluating fill activities.

(g) Upon completion of all required coordination and after receipt of the necessary state certifications, the district engineer should prepare an SOF in accordance with § 337.6.

[53 FR 14920, Apr. 26, 1988]

PART 384—INTERGOVERNMENTAL REVIEW OF DEPARTMENT OF THE ARMY CORPS OF ENGINEERS PROGRAMS AND ACTIVITIES

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AUTHORITY: E.O. 12372, July 14, 1982 (47 FR 30959), as amended April 8, 1983 (48 FR 15887); and sec. 401 of the Intergovernmental Cooperation Act of 1968, as amended (31 U.S.C. 6506).

SOURCE: 48 FR 29153, June 24, 1983, unless otherwise noted.

§ 384.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, "Intergovernmental Review of Federal Programs," issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed federal financial assistance and direct federal development.

(c) These regulations are intended to aid the internal management of the Corps of Engineers, and are not intended to create any right or benefit enforceable at law by a party against the Corps of Engineers or its officers.

§ 384.2 What definitions apply to these regulations?

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983 and titled "Intergovernmental Review of Federal Programs."

Responsible Corps official means a District Engineer, Division Engineer, or the Chief of Engineers, or a designated representative, who is considering a decision or recommendation on a proposed Federal action and is responsible for coordinating such action with the state process under the provisions of this regulation.

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Is-

lands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 384.3 What programs and activities of the Corps of Engineers are subject to these regulations?

The Chief of Engineers publishes in the FEDERAL REGISTER a list of the Corps of Engineers Civil Works programs and activities that are subject to these regulations.

§ 384.4 [Reserved]

§ 384.5 What is the Corps of Engineers' obligation with respect to Federal interagency coordination?

Responsible Corps officials, to the extent practicable, consult with and seek advice from all other substantially affected Federal departments and agencies in an effort to assure full coordination between such agencies and the Corps of Engineers regarding programs and activities covered under these regulations.

§ 384.6 What procedures apply to the selection of programs and activities under these regulations?

(a) A state may select any program or activity published in the FEDERAL REGISTER in accordance with § 384.3 of this part for intergovernmental review under these regulations. Each state, before selecting programs and activities shall consult with local elected officials.

(b) Each state that adopts a process shall notify the appropriate Division Engineer of the programs and activities selected for that process.

(c) A state may notify the appropriate Division Engineer of changes in its selections at any time. For each change, the state shall submit to the Division Engineer an assurance that the state has consulted with local elected officials regarding the change. The Division Engineer may establish deadlines by which states are required to inform the Corps of Engineers of changes in their program selections.

(d) The Corps of Engineers uses a state's process as soon as feasible, depending on individual programs and activities, after the Division Engineer is notified of its selections.

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§ 384.7 How does the Corps of Engineers communicate with state and local officials concerning its programs and activities?

(a) For those programs and activities covered by a state process under § 384.6, the responsible Corps official, to the extent permitted by law:

(1) Uses the state process to determine views of state and local elected officials; and

(2) Communicates with state and local elected officials, through the state process, as early in a program planning cycle as is reasonably feasible to explain specific plans and actions.

(b) The District Engineer provides notice to directly affected state, areawide, regional, and local entities in a state of proposed Federal financial assistance or direct Federal development if:

(1) The state has not adopted a process under the Order; or

(2) The assistance or development involves a program or activity not selected for the state process.

This notice may be made by publication in the FEDERAL REGISTER or other appropriate means, which the District Engineer in his discretion deems appropriate.

§ 384.8 How does the Corps of Engineers provide states an opportunity to comment on proposed Federal financial assistance and direct Federal development?

(a) Except in unusual circumstances, the responsible Corps official gives state processes or directly affected state, areawide, regional and local officials and entities at least 60 days from the date established by such official to comment on proposed direct Federal development or Federal financial assistance.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Corps of Engineers have been delegated.

§ 384.9 How does the Corps of Engineers receive and respond to comments?

(a) The responsible Corps official follows the procedures in § 384.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a program selected under § 384.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or is unable to submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments to the responsible Corps official.

(d) If a program or activity is not selected for a state process, state, areawide, regional and local officials and entities may submit comments to the responsible Corps official. In addition, if a state process recommendation for a nonselected program or activity is transmitted to the responsible Corps official by the single point of contact, such official follows the procedures of § 384.10 of this part.

(e) The responsible Corps official considers comments which do not constitute a state process recommendation submitted under these regulations and for which such official is not required to apply the procedures of § 384.10 of this part, when such comments are provided by a single point of contact or directly to such official by a commenting party.

§ 384.10 How does the Corps of Engineers make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Corps of Engineers through its single point of contact, the responsible Corps official either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with a written explanation of the

decision in such form as such Corps official in his or her discretion deems appropriate. The Corps official may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the responsible Corps official informs the single point of contact that:

(1) The Corps of Engineers will not implement its decision for at least 10 days after the single point of contact receives the explanation; or

(2) The Assistant Secretary of the Army (Civil Works), or the next higher level responsible Corps official, has reviewed the case and determined that, because of unusual circumstances, the waiting period of at least 10 days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§384.11 What are the Corps of Engineers obligations in interstate situations?

(a) The responsible Corps official is responsible for:

(1) Identifying proposed federal financial assistance and direct federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Corps of Engineers program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Corps of Engineers program or activity;

(4) Responding pursuant to §384.10 of this part if the responsible Corps official receives a recommendation from a designated areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Corps of Engineers has been delegated.

(b) The responsible Corps official uses the procedures in §384.10 if a state process provides a state process recommendation to such official through a single point of contact.

§384.12 [Reserved]

§384.13 May the Corps of Engineers waive any provision of these regulations?

(a) Emergency and disaster recovery actions performed under Pub. L. 99, 84th Congress, are excluded from the requirements of the Order and this regulation.

(b) In other emergencies, the Division Engineer may waive any provision of these regulations.

PART 385—PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

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